

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I )	NOTICE OF PUBLIC HEARING ON
through III pertaining to definitions, )	PROPOSED ADOPTION
certification of energy production, )	
transportation, and research facilities for tax) )	
abatement and classification )	

TO: All Concerned Persons

1. On January 15, 2008, at 1:30 p.m., a public hearing will be held in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., December 31, 2007, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson, Paralegal, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) "Department" means the Department of Environmental Quality provided for in Title 2, chapter 15, part 39, MCA.

AUTH: 15-24-3116, MCA

IMP: 15-24-3112, MCA

NEW RULE II CERTIFICATION OF ELIGIBILITY FOR TAX ABATEMENT OR CLASSIFICATION AS CLASS FOURTEEN OR FIFTEEN PROPERTY (1) A taxpayer who wishes to obtain a certificate of eligibility for abatement of property tax liability under 15-24-3116, MCA, for classification of property as class fourteen property under 15-6-157 and 15-24-3116, MCA, or for classification of property as class fifteen property under 15-6-158 and 15-24-3116, MCA, shall submit to the department a completed application for certification on a form available from the department.

(2) Within 30 days of receipt of an application pursuant to (1), the department shall determine whether the application is complete and notify the applicant in writing of its determination. The time for this determination may be extended upon written consent of the applicant. If the department determines that the application is incomplete, the department shall also describe the deficiencies. The applicant may then supplement the application or submit a new application.

(3) Within 60 days of a determination of completeness pursuant to (2), the department shall issue a certification or deny the application and notify the applicant of its decision in writing. The time for this determination may be extended upon written consent of the applicant. If the department denies the application, it shall include in the notice a statement of the reasons that the application was denied and a notification of the applicant's right to review of the denial pursuant to 15-24-3112, MCA. If the department grants the certification, it shall also notify the Department of Revenue in writing.

(4) A certification remains in effect until revoked pursuant to this subchapter.

AUTH: 15-24-3116, MCA

IMP: 15-6-157, 15-6-158, 15-6-3112, MCA

RULE III APPLICATION REQUIREMENTS AND DECISION CRITERIA:

ALTERNATING CURRENT POWER LINES UNDER 15-6-157(1)(q), MCA (1) A person who wishes to obtain a certification of the qualified portion of an alternating current power line pursuant to 15-6-157(1)(q), MCA, shall file an application on a form provided by the department pursuant to [New Rule I]. The application must contain the following information:

- (a) the name and address of the applicant;
  - (b) a description of the line for which certification is sought, including its associated equipment and structures, including interconnections;
  - (c) a listing of all wage rates paid for construction of the power line in Montana, including its associated equipment and structures, including interconnections;
  - (d) the date construction of the power line, as defined in 15-24-3102, MCA, was commenced in Montana;
  - (e) the total transfer capability of the power line established through the Western Electricity Coordinating Council path rating process;
  - (f) a list of the Montana electricity generating facilities that are class fourteen property under 15-6-157, MCA, for which a firm contract for transmission capacity for ten years or more, available throughout each year of the contract, has been obtained, including:
    - (i) the location of each generating facility;
    - (ii) the period for which each facility has secured firm contract for transmission capacity throughout each year;
    - (iii) documentation of the amount of firm transmission on the power line that has been secured for each generating facility throughout each year. If this amount is not the same throughout the year, the applicant shall describe the different amounts and the length of periods during which those amounts apply; and
    - (iv) name, address, and telephone number of contact person for each facility.
- (2) The qualified portion of a power line for which the amount of firm contracted power from class fourteen generating facilities is constant throughout the year is that amount divided by the total transfer capability of the line established through the Western Electricity Coordination Council path rating process. The qualified portion for a line for which the amount of firm contracted power from class fourteen generating facilities varies throughout the year is the weighted average

determined according to the following formula: (amount for first period x number of days in period + amount for next period x number of days in period . . . )/365. For deliveries to load on the line using firm transmission contracts for a blend of power from multiple generating facilities, the amount that is deemed to come from class fourteen facilities is the percentage of a delivery equaling the percentage of the annual energy portfolio of the commodity provider that is generated from class fourteen facilities located in Montana.

(3) In making its certification determination, the department shall use the application and any other credible information available to the department.

(4) A person who has received a certification pursuant to this rule may at any time apply for a certification of a different qualified portion of a power line. An application for a new certification shall contain the information required for an initial certification required pursuant to (1).

(5) Ten years after a power line becomes operational, the taxpayer shall submit to the department an update of the information required in (1)(e) and (f). Based on this information and any other credible information available to the department, the department shall determine the current qualified portion of the power line. If the current qualified portion of the power line is less than the last certified qualified portion of the power line, the department shall revoke the certification.

AUTH: 15-24-3116, MCA

IMP: 15-6-157, 15-24-3116, MCA

REASON: Chapter 2, Laws of Montana, May Special Session, 2007, adopted the Jobs and Energy Development Incentives Act. That Act is codified as Title 15, chapter 24, part 31, MCA. It instituted property tax abatements and two new property tax classes, and it modified other property tax classes. These new provisions and modification were made to provide tax incentives for new investment in the conversion, manufacture, and transport of renewable energy, clean coal development, carbon dioxide sequestration equipment, clean advanced coal research and development equipment, and renewable energy research and development equipment.

As enacted in chapter 2, 15-24-3112, MCA, requires the Department of Environmental Quality to determine whether equipment and facilities qualify for tax abatement and classification through a certification process. Section 15-24-3116, MCA, directs the department to adopt rules to implement the certification process. New Rules I through III are necessary to comply with this legislative mandate.

New Rules I and II are necessary to provide the basic process, including time frames, for expeditious certification of facilities and equipment by the Department of Environmental Quality for tax abatements and classifications.

New Rule III provides informational requirements and decision criteria for certification of alternating current power lines that carry electricity from class fourteen generating facilities under 15-6-157(1)(q), MCA. The information required is necessary for the department to determine whether and what portion of the line meets the requirements for classification as class fourteen property. It also provides more detail than the statute on how the department will determine the portion of the

line than will be classified as class fourteen. The proposed rule requires a description of all labor rates paid during facility construction because, under 15-24-157(3)(a), MCA, for a facility to qualify as class fourteen property, all construction laborers must have been paid the standard prevailing rate of wages for heavy construction. The Western Electricity Coordination Council (WECC) path rating process is used for determining the capacity of the line. WECC has authority to set limits on the amount of power that can be transported over a line based on operational concerns. Use of the WECC rating therefore provides the most accurate method of determining the maximum amount of electricity that the line can transport. Section (2) also provides a formula for use when the amount of firm contracted power attributable to class fourteen generating facilities varies over the year. A weighted average is used to give the most accurate measurement of the amount of contracted power.

The transfer capability of a line can be contracted for by either generating facilities interconnecting with the line or by commodity providers serving customers on the line. A specific customer may have a contract with a specific generating facility, in which case the department could readily determine whether a class fourteen property was using the line. Alternatively, the commodity provider could be obtaining electricity from more than one generating facility and thus be providing electricity from a blend of resources. In order to ensure that certification is given for electricity from class fourteen generating facilities, (2) would set the percentage of all the electricity sold by the commodity provider that is from class fourteen property as equal to the percentage sold to any one customer. The department would then use this percentage in calculating how much of the electricity sold to customers on the line comes from class fourteen facilities.

Section (3) of New Rule III allows the department to use, in addition to information in the application, other credible information to determine whether and what portion of the line to certify. This section is necessary to ensure that the department is not completely dependent on the applicant for information. Ability to use other information will allow the department to verify information in the application.

Section (4) of New Rule III is proposed to allow the owner of a line to obtain a new certification if the amount of electricity on the line from class fourteen generating facilities changes. Allowing new certifications would best meet the purpose of chapter 2 (see 15-24-3101, MCA), which is to encourage clean power generation, by providing incentives for line owners to provide capacity that becomes available on the line to clean power generation.

Section (5) of New Rule III implements 15-6-157(5)(a), MCA, which requires the department to review a certification of power line after ten years and to revoke the certification if the property no longer meets the requirements for certification. While the meaning of this requirement is clear when applied to other power lines, which are certified based on a determination that the line as a whole meets certain requirements, it is not so clear when applied to certifications under 15-6-157(1)(q), MCA, which is a certification of a portion of the line. Section (5) would require the department, in conducting its ten-year review, to determine whether the current certification is not more than the portion of the line for which there are firm contracts for electricity from class fourteen generating facilities. This is necessary to provide

an incentive for line owners to maintain accurate certifications and, in so doing, it also encourages line owners to maintain capacity for class fourteen generating facilities.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than January 17, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Paul Cartwright has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor was notified on August 31, 2007, by regular mail.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ John F. North

JOHN F. NORTH  
Rule Reviewer

/s/ Richard H. Opper

RICHARD H. OPPER, Director

Certified to the Secretary of State, December 10, 2007.